

REMARKS

Applicant appreciates the courtesies extended to Applicant's representative during the personal interview held August 24, 2005. The present response summarizes the substance of the interview. At the interview, proposed amendments to the claims and specification were presented. Proposed Claim 1 set forth the relationship between the upper end of fly-flap, the at least one pocket located on the upper portion of the fly flap and the front of the torso section of Applicant's active wear garment. Arguments were advanced that the basic references to Carlson and Schustack are "girdles", that their inventors were concerned with "figure control" and "appearance improvement", and that it would not have been obvious to modify the fly-flap of either Carlson or Schustack such that it extended to a point adjacent the waistband and included a pocket therein. It was argued that this would defeat the purpose of the garments of Carlson and Schustack, and thus would not be an obvious modification. The Examiner gave no indication of allowability of the proposed claims, but did indicate the presence of allowable subject matter. The Examiner agreed that amended Claim 1, and claims depending therefrom, would be allowable if further amended to more clearly and definitely recite the location of the upper end of the fly-flap, the at least one pocket and the releasable fastener in relation to the torso portion of the garment, the crotch opening and the wearer of the garment. The Examiner urged that support for such an additional recitation should be provided in the specification, but warned against the addition of new matter. Finally, the Examiner indicated that should any further issues remain, upon the filing of an amendment to the claims and specification by Applicant, the Examiner would call Applicant's representative to discuss corrections necessary to place the application in condition for allowance.

At the above-noted personal interview, the Examiner indicated that the disclosure did not provide adequate support for amendments needed to place independent Claim 1 in condition for allowance. Applicant has, therefore, amended the specification at page 11 to more clearly recite the relationship between the fly-flap, the releasable fastener sections, the torso section, the crotch opening and the liner of Applicant's active wear garment. These elements of Applicant's invention have further been described in relation to their placement on a wearer's body. Support for this amendment to the specification is clearly found in drawing Figs. 1-5 of Applicant's disclosure, thus no new matter has been added. The specification has also been amended at page 10, wherein reference numeral "20" has been changed to -- 22 --, to correct an informality noted by the Examiner in her prior Office Action.

By the present amendment, Applicant has amended Claims 1, 14 and 16. Claim 11 has been cancelled, and Claim 18 has been added. Claims 1-10 and 12-18 remain pending in the present application. Claim 1 is the only independent claim.

Dependent Claim 14 has been amended to correct indefiniteness, and to recite Applicant's invention in a more clear and definite manner. Claim 18 has been added to further define Applicant's invention. Support for newly added Claim 18 is clearly provided at lines 7-10 of page 10 in the specification. Thus, no new matter has been added with the addition of Claim 18.

In a prior Office Action, the Examiner made a requirement for the election of species. Applicant elected the species shown in Fig. 12, and as a result Claims 13, 16 and 17 were held to be drawn to a non-elected species, and were withdrawn from further consideration. Claims 1-11, 14 and 15 were considered by the Examiner to be generic. In anticipation of the allowance of generic Claim 1, Applicant has amended previously withdrawn Claim 16 to correct potential indefiniteness, and requests that previously withdrawn Claims 13, 16 and 17 be held as no longer withdrawn from consideration, in accordance with the provisions of 37 CFR § 1.141. It is further requested that Claims 13, 16 and 17, which depend from Claim 1, be passed to issue with the allowance of generic claims 1-10, 14 and 15, and Claim 12 of the elected species. See M.P.E.P. § 809.02(c).

In the recent Office Action the Examiner rejected Claims 1-5, 7-10 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Carlson (US 3,974,836) in view of Morera et al. (US 4,602,390). Claims 1 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schustack (US 3,279,469) in view of Morera et al. Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlson in view of Morera et al, for the same reasons as the rejection of Claim 1 and further in view of Kowatsch (US 2,544, 840). And, Claims 14 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlson and Morera et al., for the same reasons as the rejection of Claim 1 and further in view of Lonon (US 4,835,795).

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

In this regard, amended independent Claim 1 now recites that the active wear garment of Applicant's invention has a fly-flap with a liner that covers the crotch opening, and an upper end that extends to a point adjacent the waistband of the garment. The upper end is further defined as including a section of releasable fastener in the rear side that engages a section of releasable fastener on the front of the garment's torso section, and at least one pocket on the front side thereof. The at least one pocket is further defined as being positioned above the crotch opening of the garment, adjacent the front of the torso section of the garment, and in front of the abdomen of a person wearing the garment.

Each of the references, Carlson, Schustack, Morera et al., Kowatsch, and Lonon applied by the Examiner in her rejection of Claims 1-12, 14 and 15, have been carefully reviewed. Carlson discloses a girdle having a crotch opening 36 and a fly-flap 50 attached to the rear of the garment and releasably attached by mating fasteners 62, 62 located just above the crotch opening 36, on the front of the garment and the fly-flap, respectively. Carlson does not show an upper end of the fly-flap, and mating fasteners extending to a point adjacent the waistband, and does not show at least one pocket attached to the upper end, with the pocket located above the crotch opening and in front of the wearer's abdomen. Schustack shows a foundation garment or girdle having a crotch opening 40 and a fly-flap 46 attached to the rear of the garment and releasably attached by mating fasteners 54, 56

located just above the crotch opening 40, on the front of the garment and the fly-flap, respectively. Schustack also shows liner 60 located on the rear surface of fly-flap 46. Schustack does not show an upper end of the fly-flap, and mating fasteners extending to a point adjacent the waistband, and does not show at least one pocket attached to the upper end, with the pocket located above the crotch opening and in front of the wearer's abdomen. Morera et al. discloses a pocket, which may be incorporated into any article of clothing, at any location. Kowatsch discloses a waterproof pocket incorporated into an article of clothing. And, Lonon discloses an article of clothing having a fly-flap that is attachable to either the front or the rear of the garment by mating fasteners placed on the upper end of the fly-flap and the front and the rear of the garment, respectively.

MPEP § 2143 states: "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."

In Applicant's view, the references applied in the Examiner's prior art rejections of the first Office Action, taken alone or in combination, fail teach or suggest an active wear

garment having a fly-flap and torso section with mating releasable fastener sections which extend from a crotch opening and a liner, respectively, to a point adjacent the waistband of the garment, when the releasable fasteners are engaged. Nor, do the references make obvious such a garment having at least one pocket located on the front of the fly-flap and positioned above the crotch opening and the liner, and in front of the wearer's abdomen. There is nothing in the prior art that would suggest to one having ordinary skill in this field, to modify any of the references cited, so as to arrive at Applicant's active wear garment now recited in the claims as amended. It is therefore Applicant's conclusion that the combined teachings of Carlson, Schustack, Morera et al., Kowatsch, and Lonon fail to establish a *prima facie* case of obviousness.

The other patents made of record in the present application, but not used by the Examiner in rejecting any of the claims, have also been carefully reviewed, however, Applicant finds nothing therein which would overcome or supply that which is lacking in the other applied prior art noted above.

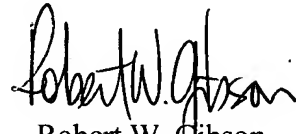
The claims in this application have been revised to more particularly define Applicant's unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the above-noted reasons is respectfully requested.

Application Serial No.: 10/663,750
Art Unit: 3765

Attorney Docket No. 18084.01
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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Gibson". The signature is fluid and cursive, with the first name "Robert" and last name "Gibson" being clearly legible.

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RWG:dht
Attachments